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In the Supreme Court of the United States

(OCTOBER TERM, 1943)

No. 447

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE McGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,
Petitioners,

VERSUS

YELLOW CAB TRANSIT COMPANY,
a Corporation,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

YELLOW CAB TRANSIT COMPANY,
Respondent,

By JOHN B. DUDLEY,
DUKE DUVALL,
Oklahoma City, Oklahoma,
Counsel for Respondent.

ovember, 1943.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT

Stripped to its essence, the question involved in this case is whether a shipment of liquor by a common carrier from one state destined for delivery within a United States Military Reservation or other Federal enclave located inside the geographical boundaries of another state, is a shipment "through" the latter state or an "importation into" such state.

The other points referred to in the petition and supporting brief are simply side issues subordinate or auxiliary to this primary question.

It is our position herein that this Court has squarely and definitely settled this point as held by both the trial and Circuit Courts and there is no occasion for *certiorari*.

Respondent is a common carrier of commodities generally operating in interstate commerce under the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission. In accordance with its tariff on file, it accepted, under a uniform bill of lading, a shipment of liquor originating at East St. Louis, Illinois, upon which the freight was prepaid, destined for delivery in Fort Sill Military Reservation located within the boundaries of Oklahoma. On the truck transporting the liquor were also various other commodities destined to various points and various consignees.

Certain of the petitioners, state officers, took it upon themselves to raid such truck and seize the interstate liquor shipment which was stipulated to be still in transit.

It is the contention of the petitioners that they had the right to seize this liquor under the State laws because it amounted to an importation into the State in violation of the State statutes to the same extent as if it had been destined for delivery into any city, town or other point within the State, and that the fact that its ultimate delivery point was a United States Military Reservation was wholly immaterial. The courts below held to the contrary.

In the last two pages of petitioners' brief (pages 21 and 22) as an apparent afterthought it is asserted that respondent was not a proper party and had no right to maintain this action. This is indeed an afterthought never

asserted below, and we will devote no attention to the point herein except to say that a common carrier, as bailee, certainly has the right to protect shipments in its possession and which it is lawfully hauling, from unlawful seizure and interference.

ARGUMENT

Neither these State officers nor the State can have any justiciable interest in what Federal laws may obtain in Fort Sill Military Reservation or other enclaves of the United States, nor whether they be enforced or not by the Federal authorities. This must be true regardless of the source of such Federal laws, whether through specific congressional act, the Assimilative Crimes Statute, or military fiat. The only question the State can possibly be rightfully interested in is whether or not it has jurisdiction to enforce its own liquor laws over the Reservation and other Federal enclaves.

The State has no legislative jurisdiction over Fort Sill Military Reservation.

The trial court found (R. 35):

> "That Fort Sill Military Reservation is under the exclusive jurisdiction and dominion of the Federal Government, and the State of Oklahoma has no jurisdiction over it, except in very limited respects where Congress has ceded jurisdiction to the State and which

are of no effect upon or pertinent to the issues in this case."[1]

The Circuit Court approved.

The correctness of the foregoing quoted holding of the courts below is no longer open to question. In 1913, the Oklahoma Legislature enacted a statute[2] expressly ceding exclusive jurisdiction over Fort Sill Military Reservation, reserving only the right to tax railroads and other corporations and their fanchises and property within the Reservation and the right to serve civil or criminal process therein in suits or prosecutions on account of rights acquired, obligations incurred or crimes committed within the State but outside the Reservation.

This Federal area, which was acquired long prior to statehood, has been and still is used exclusively for military purposes. This Court and the Supreme Court of Oklahoma in many cases, a few of which are cited in the foot-

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1. Examples of the exceptions referred to by the trial court where Congress had expressly ceded jurisdiction to the State, are the act extending the provisions of Workmens Compensation Laws over Federal enclaves, Act of June 25, 1936, 49 Stat. 1938, 40 USCA 290; and the Buck Act extending State income, sales and use tax acts to Federal areas, Act of October 9, 1940, 54 Stat. 1059, 4 USCA 13-18.

2. 8 O. S. 1941, Sec. 4.

note[3] have squarely determined under such circumstances as these that the State has no legislative or other jurisdiction over such Federal area except in the limited respects mentioned. The aforesaid Statute of Cession is quoted and applied to Ft. Sill in the first Oklahoma decision cited.

The statement in the petition (page 7) and in the brief (page 15) that the district court found that Fort Sill was never a part of the State of Oklahoma and not within the boundaries of Oklahoma Territory, is inaccurate. Counsel was simply referring to a discussion in the opinion. The Court only made one finding and that was that the facts were as contained in the written stipulation of the parties on file in the case and the admissions in the pleadings (R. 35). Nor was there any conclusion of law to that effect, the only conclusion in this respect being the one above quoted (R. 35-36).

The shipment was a movement in interstate commerce through and not an importation into the State of Oklahoma.

The district court concluded (R. 36) that since the shipment originated in Illinois, consigned for delivery by common carrier into the Reservation, the property of the Fed-

3. Collins v. Yosemite Park & Curry Company, 304 U. S. 518, 82 L. ed. 1502; Murray v. Gerrick & Company, 291 U. S. 315, 78 L. ed. 821; Standard Oil Company of California v. California, 291 U. S. 242, 78 L. ed. 775; Utley v. State Industrial Commission, 176 Okla. 255, 55 Pac. (2d) 762; In re Annexation of Reno Quartermaster Depot—Military Reservation to Independent School District No. 34, Canadian County, 180 Okla. 274, 69 Pac. (2d) 659.

eral sovereign, it was a movement through the State of Oklahoma in interstate commerce, and not an importation into the State so as to be subject to the State's liquor laws.[4] The Circuit Court of Appeals affirmed this holding.

This is the real gravamen of the case, and as we said at the outset, it does not satisfy the necessarily stringent requisite to establishing a ground for *certiorari* by this Court because it is a Federal question and one which has been definitely settled by recent decisions of this tribunal.

The case of *Collins* v. *Yosemite Park & Curry Company*, 304 U. S. 518, 82 L. ed. 502, has conclusively foreclosed this identical point against petitioners. About the only difference between that case and this one is that the Federal enclave there involved was a National Park instead of a Military Reservation. California has a code of liquor laws more liberal than those of Oklahoma, to be sure, but nevertheless regulating the importation of liquor into the State, as do the Oklahoma Statutes. Its statutes, as do those of Oklahoma, make it a crime to import liquor into the state in violation of the stautory provisions. The

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4. "(4) That said shipment, being destined for delivery in Fort Sill Military Reservation, was a shipment *through* the State of Oklahoma, and was not transported *into* the State for delivery or use therein.
"(5) That said shipment was lawfully moving in interstate commerce at the time of its seizure, and not in violation of the laws of the State of Oklahoma or of the United States, and the defendants unlawfully seized the same and are unlawfully retaining possession thereof."

Yosemite Park has exactly the same status in relation to California as the Federal Military Reservation does to Oklahoma. Indeed, California adopted a statute ceding exclusive jurisdiction to the Federal sovereign, very similar to the aforesaid Oklahoma Statute of 1913.

The district court in the Yosemite case held that exclusive jurisdiction over the park was in the United States and that California laws had no force over shipments moving from outside of the State destined for delivery within the park. An injunction was granted against state officers from interfering with such shipments, just as the trial court did in the case at bar.[5]

Notwithstanding the syllogistic argument of petitioners the word "interstate" means between two states, and the Reservation, the point of destination, not being a state, there is no interstate commerce—it can hardly be gainsaid that under present day statutes and decisions this concept is too narrow. This shipment had crossed several state lines in coming from East St. Louis, Illinois. It, and respondent as the common carrier transporting it, were within the scope of Part II of the Interstate Commerce Act.[6]

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5. A pertinent excerpt from the Yosemite opinion is: "As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the Twenty-first Amendment. There was no transportation *into* California 'for delivery or use therein.' The delivery and use is in the Park, and under a distinct sovereignty" (Italics ours).

6. 49 USCA Chap. 8, Sec. 301, *et seq.*, and the rules and regulations of the Interstate Commerce Commission.

It is a cardinal principle in applying the Commerce Clause of the United States Constitution that the phrase "interstate commerce" is to be construed as "not a technical legal conception" but a practical one drawn from the course of business.[7]

Transportation across state lines alone is sufficient to make it one in interstate commerce, and this be true even though the destination of the shipment is in the same state as the point of origin.[8]

Even if such shipment did not move in interstate commerce, the exclusive control thereof by the United States is amply supported in a clause other than the Commerce Clause of the Constitution, namely, Art. IV, Sec. 3, giving Congress plenary power over its possessions.[9]

As illustrating the lack of the importance and merit of the question raised by petitioners as a ground for *certiorari*.

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7. Minnesota v. Blasuis, 290 U. S. 1, 78 L. ed. 131, 134; Inter-Island Steam Navigation Company v. Territory of Hawaii, 98 Fed. (2d) 412, affirmed 305 U. S. 306, 83 L. ed. 189, holding the Territory a State within the meaning of the clause; Stoutenburgh v. Hennick, 129 U. S. 141, 32 L. ed. 637, holding commerce between States and the District of Columbia interstate commerce; 11 American Jurisprudence, Sec. 4, page 8.

8. National Labor Relations Board v. Fainblatt, 306 U. S. 601, 83 L. ed. 1014; Missouri Pacific Railroad Company v. Stroud, 267 U. S. 404, 69 L. ed. 683; 49 USCA. Chap. 8, Sec. 303, Subdivision 10, defining the term.

9. Sancho v. Barcardi Corporation (9th Cir.) 109 Fed. (2d) 57.

we point out that if carried to its logical conclusion, the position of petitioners would mean that the State could effectively control activity within the Fort Sill Military Reservation and other enclaves of the United States. It must be true that if a state has no right to control the activities of the personnel of a Military Reservation or other matters therein, then it certainly cannot do indirectly that which it has no power to do directly, and it cannot by an embargo, prohibit the transportation of liquor, cigarettes or other things into a Military Reservation when it has no right to regulate the use thereof within the confines of such governmental property.

In a very recent holding (March 1, 1943), this Court in *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U. S. 285, 87 L. ed. 560, expressly condemned any effort upon the part of the state to indirectly control activities within a Federal area (there the Military Reservation of Moffett Field) by adopting legislation affecting persons within the state doing acts preparatory to performing some service or making some sale within the enclave. California had passed an amendatory statute to its milk control act in order to regulate and control the supply and furnishing of milk within Federal enclaves which the original act was held not to cover. This Court struck down the statute as being beyond the jurisdiction and power of the state.

The petitioners expend considerable space on the various state liquor laws, contending that the Assimilative Crimes Act put such statutes in force in a Military Reservation. As a matter of fact, no state law was violated by

this shipment, but we shall not lengthen this brief by pointing this out in detail, as we do not deem it important to the merits of the petition for *certiorari*. Furthermore, though not expressly mentioned therein, the *Collins* v. *Yosemite Park & Curry Company case, supra*, inferentially settled this question.[10]

Then, too, the policy of the National Government not being one of liquor prohibition, it could hardly be logically contended that its soldiers and Federal Military Areas in which they are stationed should be subjected therein to the laws of a state with a contrary policy.

More important, though, is the fact that it is no concern of the State or its police officers what laws are in effect within a Military Reservation or other Federal area. Such laws are Federal laws[11] and can only be enforced by authorities of that sovereign. The State and its officers have no justiciable interest in the source of such Federal laws nor in the enforcement thereof.

It is urged in the petition and supporting brief that perhaps marriages performed in Fort Sill Military Reserva-

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10. Crater Lake National Park Company v. Oregon Liquor Control Commission, 26 F. S. 363.

11. This is true even though they were adopted from the State by the Assimilative Crimes Act or otherwise and regardless of their source. People of Puerto Rico v. Shell Company, 302 U. S. 253, 82 L. ed. 235; United States v. Press Publishing Company, 219 U. S. 1, 8; Franklin v. United States, 216 U. S. 559, 568.

tion might be invalidated under the holding of the lower court. There is nothing in the record to show that any marriages were ever performed there, and this is the first time that such a suggestion has been made in this litigation. Be that as it may, it is fundamental that: "When the Federal Government acquires a tract of land within a state, local law, not inconsistent with Federal policy, remains in force, until altered by national legislation." *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U. S. 285, 87 L. ed. 560.

Furthermore, there are various civil laws of states that have no force in Federal areas. For example, until Congress expressly extended the operation of such laws in Federal enclaves, Workmens Compensation Acts did not apply.[12]

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12. 40 USCA 290; Murray v. Gerrick & Company, 291 U. S. 315, 78 L. ed. 821; Utley v. State Industrial Commission, 176 Okla. 255, 55 Pac. (2d) 762.

CONCLUSION

We respectfully submit that the decision below is correct; that no question of general importance is presented, and that the petition for writ of *certiorari* should be denied.

YELLOW CAB TRANSIT COMPANY,
Respondent,

By JOHN B. DUDLEY,
DUKE DUVALL,
Oklahoma City, Oklahoma,
Counsel for Respondent.

November, 1943.